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THE NEW CHINESE REVOLUTION: HONG KONG'S INSURANCE AGAINST CHINESE NONCOMPLIANCE WITH THE 1984 JOINT DECLARATION

I. INTRODUCTION

Since 1989 the international community has experienced political changes in historic proportions. The Cold War has ended, the Soviet Union has dissipated, and the individual nations that once comprised the so called Evil Empire are struggling to establish workable political and economic systems. Germany has re-united, while Eastern Europe, once solidly behind the "iron curtain," is now in the process of complete political and economic reformation through methods ranging from peaceful negotiation to warfare. A recurring theme evident in many of these post-Cold War evolutionary patterns is the success of capitalism as an economic structure and the coinciding demise of heavily socialized systems. As a result, the once fierce ideological tug-of-war between East and West has been relaxed in many corners of the world, at least for now.

There are, however, still many polities in the world struggling in this classic battle between—at the extremes—free-market economics and authoritarian state economic control. Nowhere in the international community are the two divergent theoretical and economic systems on such a definite path toward potential conflict as they are in Southeast Asia where the People's Republic of China ("China") will assume control over the British Crown Colony of Hong Kong ("Hong Kong") on July 1, 1997 in accordance with the 1984 Sino-British Joint Declaration on the Question of Hong Kong.¹ China is the world's only remaining "communist" superpower and Hong Kong is one of the world's purest examples of free enterprise.² In 1997 Hong Kong will return to Chinese control for the first time since 1841.³ As to the administration of Hong Kong after this so-called retrocession, China has adopted a "one country, two systems" approach so that Hong Kong will continue its role as an international

1. See discussion *infra* part III.

2. Roger Skrentny, *Hong Kong: Still the Financial Center of Asia*, L.A. DAILY J., Sept. 29, 1986, at 14.

3. See *infra* notes 24-26 and accompanying text; see discussion *infra* part III.

trading center.⁴ In Hong Kong and throughout the world, however, there is well-founded speculation over what effect this retrocession will have on Hong Kong's highly-successful, free-market economy.⁵

This Note examines the 1984 Sino-British Joint Declaration and explores the future of Hong Kong after 1997 in light of China's efforts to modernize its own economy. It concludes: (1) that it is clearly in China's best interest to maintain Hong Kong's autonomy so that the territory will continue to fuel China's economic reformation; and (2) that Hong Kong's fate lies not in the international community's strict enforcement of the Joint Declaration, but in the Chinese government's realization that the more Beijing involves itself in Hong Kong's affairs, the more danger there is of jeopardizing the territory's future as the East's premier financial and trading center.

II. HISTORICAL PERSPECTIVE OF SINO-HONG KONG RELATIONS

China and Hong Kong share a unique history. Familiarity with this history is crucial to fully understand the complex issues surrounding the retrocession in 1997.

The story of modern-day Hong Kong begins in 1841 when the British flag was first raised over the territory.⁶ The seizure was the result of the First Opium War between Great Britain and Imperial China. The war began as a result of Great Britain's attempt to even its trade imbalance with China by importing opium into the country; the Chinese resisted and war ensued. In 1842, the First Opium War ended at the Convention of Chuanbi with the Treaty of Nanking.⁷ Under the terms of the treaty, Hong Kong Island was ceded to Britain in perpetuity.⁸

The colony was extended in 1869 after two years of war between the Chinese and the British.⁹ This second war was sparked by a Chinese attack on a British official, Sir Frederick Bruce, as he was on his way to present his credentials to the Chinese Emperor. The Convention of Peking

4. See *infra* part III.

5. See discussion *infra* part VI.

6. The British Captain Elliot declared Hong Kong a British colony without obtaining authorization from London. Terry Cunnew, *Hong Kong: Estates Gazette Focus on Hong Kong*, Reuter Textline Estates Gazette, Nov. 12, 1988, available in LEXIS, News Library, TXPRIM File.

7. *Id.* Treaty of Nanking, Aug. 29, 1842, P.R.C.-U.K., 30 BRITISH AND FOREIGN STATE PAPERS 389.

8. Cunnew, *supra* note 6.

9. *Id.*

ended the war and granted the British two territories which are now part of the greater Hong Kong territory: the Kowloon Peninsula and Stonecutter's Island.¹⁰ In 1898, as part of the second Convention of Peking, the Imperial Chinese government granted a 99-year lease of the Hong Kong territories to the British government.¹¹ The 99-year lease term began on July 1, 1898 and will end at midnight on June 30, 1997.¹² From this point in its history, Hong Kong began its transformation from an essentially barren territory to a valuable trading post for the West to move goods into and out of China.¹³

Hong Kong's unique position as a British colony carved out of mainland China led many Chinese to seek refuge within Hong Kong's borders during the several unstable periods in China's relatively recent history.¹⁴ Hong Kong experienced its first major influx of Chinese refugees during the Chinese Revolution of 1911.¹⁵ Later, in 1938, the Sino-Japanese War caused an estimated 1.6 million people to flee to Hong Kong, flooding the colony with refugees.¹⁶

During World War II, Japan invaded Hong Kong bringing trade to a standstill as local residents fled the territory.¹⁷ After the War, the British government regained control of the colony from Japan.¹⁸ Between 1945 and 1950, Hong Kong was once again saturated with Chinese refugees when revolution struck the mainland and communists took over the

10. *Id.*; Convention of Peking, Oct. 24, 1860, P.R.C.-U.K., 50 BRITISH AND FOREIGN STATE PAPERS 10.

11. Cunnew, *supra* note 6; Convention with China Respecting an Extension of Hong Kong Outer, June 9, 1898, P.R.C.-U.K., 90 BRITISH AND FOREIGN STATE PAPERS 17. *Id.*

12. *Id.* at 1. Daniela Deane, *The Vanishing Border; As 1997 Approaches, Is China Taking Over Hong Kong or Vice Versa?*, L.A. TIMES, Aug. 4, 1991, at M14.

13. Cunnew, *supra* note 6.

14. HONG KONG GOV'T INFO. SERVICES, HONG KONG 1987, 1, 297 (1987), cited in Johnson C. Ng, Note, *Hong Kong After 1997: An Experimental Government Practicing Capitalism Within a Socialist Sovereign*, 10 N.Y.L. SCH. J. INT'L & COMP. L. 67, 70 n.27 (1989) [hereinafter HONG KONG 1987].

15. *Id.*

16. *Id.* ("[A]t the height of the influx, about half a million people were sleeping in the streets.").

17. *Id.* (noting that Japanese troops remained in the British colony for three years and eight months).

18. *Id.*

Chinese government.¹⁹ During that relatively short period of time, Hong Kong's population skyrocketed from 500,000 to 2.2 million.²⁰

Hong Kong's role as China's entrepôt was disrupted shortly after the communists gained control.²¹ The United Nations initiated a trade embargo as part of its effort to thwart communist control of China.²² The embargo was eventually dropped as its success proved doubtful.²³

Hong Kong's economic success developed in the years following the communist takeover of China as the territory transformed its economy.²⁴ The colony built up its industry through highly successful laissez-faire economic policies which continue today.²⁵ As China began to trade internationally in the 1970s, Hong Kong resumed its familiar role as a conduit for trade between China and the outside world.²⁶

In 1972, China began to pressure the United Nations for Hong Kong's return.²⁷ In the late 1970s, Britain negotiated with the Chinese to safeguard Hong Kong's prosperity, as the British realized that 1997 (the deadline to return Hong Kong sovereignty to China under the 99-year lease) was fast approaching.²⁸ China and Great Britain reached an agreement over Hong Kong's future in 1984.²⁹

19. *Id.*

20. *Id.* Hong Kong's population in 1992 was 5.8 million. Louis Kraar, *Asia 2000*, FORTUNE, Oct. 5, 1992, at 112-13 [hereinafter *Asia 2000*].

21. HONG KONG 1987, *supra* note 14.

22. *Id.* at 71.

23. *See infra* part IV.

24. *Id.* There was, however, one other major world event, the Korean War, that slowed Hong Kong's economic growth. *Id.*

25. *Id.* There were many other factors contributing to Hong Kong's success, including "(a) [the] existence of a free port and free trade; (b) convertible currency; (c) low taxation and prudent fiscal policy; (d) favorable location and excellent telecommunications with other big cities; (e) long accumulation of commercial experience; (f) hard work and entrepreneurial instinct of the people; and (g) flexible labor market." *Id.*

26. *Id.* *See infra* part V (discussing Hong Kong's role as China's entrepôt).

27. N. MINERS, *THE GOVERNMENT AND POLITICS OF HONG KONG* 15-17 (1981). The Chinese maintain that Hong Kong is a Chinese territory that was taken by the British at a time when China was too weak to object effectively to British imperialism. Johnson, *The Mousetrapping of Hong Kong*, 24 ASIAN SURV. 887, 890 (1984), *cited in* Ng, *supra* note 14, at 72 n.46. China stressed that it was preparing to take back its territory upon the expiration of the 99-year lease term. *Id.*

28. *Id.*

29. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, Dec. 19, 1984, U.K.-P.R.C., 1984 Gr. Brit. T.S. No. 20 (Cmd. 9352)

III. THE 1984 JOINT DECLARATION: HONG KONG'S HIGH DEGREE OF AUTONOMY

The Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (the "Joint Declaration") governs the retrocession of Hong Kong to China. On July 1, 1997,³⁰ China will once again exercise sovereignty over the entire territory that is modern-day Hong Kong.³¹ Hong Kong will become a Special Administrative Region of China (an "SAR"), an entity governed under the Chinese Constitution.³²

Annex I to the Joint Declaration elaborates on China's basic policies toward Hong Kong after the retrocession in 1997.³³ Under the agreement, Hong Kong maintains many important powers of self-government until 2047, when China will take more direct control of the SAR.³⁴ The agreement provides for the continuation of the laws currently in force in Hong Kong,³⁵ with Hong Kong retaining final adjudicative authority over all internal legal disputes.³⁶ In addition, the Joint Declaration provides that the government in Hong Kong be composed of "local inhabitants."³⁷

[hereinafter Joint Declaration] (composed of an introduction, the Joint Declaration, the three Annexes, the Associated Exchange of Memoranda, and Explanatory Notes).

30. *Id.*

31. *Id.* For an interesting account of how Hong Kong's tourist industry is preparing for this momentous event, see *Hong Kong: The Colony Tenses for a Future Perfect*, MGMT. TODAY, May 1992, at 98, 107 [hereinafter *Future Perfect*].

32. P.R.C. CONST. OF 1982, art. 31 ("The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in light of the specific conditions."). The current rule of law established by the British, The Letter Patent and the Royal Instructions, will be replaced by the Basic Law. Joint Declaration, *supra* note 29.

33. Joint Declaration, *supra* note 29, at Annex I.

34. *Id.*

35. *Id.* §3(3) ("The Hong Kong Special Administrative Region will be vested with executive, legislative, and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.").

36. *Id.*

37. *Id.*

(1) The government of the special administrative region will be composed of local inhabitants. The chief executive will be appointed by the central People's Government on the basis of the results of the elections or consultations to be held locally. Principle officials will be nominated by the chief executive of the

However, China reserves the right to approve appointments to many of Hong Kong's highest governmental positions—including the chief executive of the SAR—one very powerful method of precluding Hong Kong's practical exercise of full autonomy.³⁸

A central focus of the Joint Declaration³⁹ in providing for Hong Kong's future is to preserve its current economic system in order to maintain its status as an international trading center.⁴⁰ Annex I of the Joint Declaration expands on the blueprint for maintaining Hong Kong's economy.⁴¹ This portion of the Joint Declaration allows Hong Kong to remain a separate customs territory with an independent finance and taxation system.⁴² Hong Kong will also be permitted to maintain and develop economic and cultural relations on an international level, independent of "mother" China.⁴³ Likewise, the Joint Declaration

Hong Kong Special Administrative Region for appointment by the central people's government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisors or hold certain public posts in government departments of the Hong Kong Special Administrative Region.

Id.

38. *Id.*

39. Joint Declaration, *supra* note 29.

40. If Hong Kong were to be governed directly by Beijing, confidence in the region would plummet. *See infra* part VI.

41. Joint Declaration, *supra* note 29.

(5) [T]he current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.

Id.

42. *Id.* § 3(6), (8).

(6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory. . . .

(8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region

Id. § 3(6), (8).

43. *Id.* § 3(10).

(10) Using the name "Hong Kong, China," the Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international

recognizes Hong Kong's special role in the region as an international financial center and specifically ensures that Hong Kong retain this status.⁴⁴ It is abundantly clear throughout the governing document that China does *not intend*⁴⁵ to disturb Hong Kong's free market economy and risk the loss of its brightest economic gem.⁴⁶

The highly confident terms in Annex I that speak to Hong Kong's independence are meant to convince the people of Hong Kong, and the world, that the SAR will not be overwhelmed by the totalitarian Chinese government.⁴⁷ The primary goal is to show that Hong Kong will continue to function as it does today, the only difference being that reform-minded China will replace the United Kingdom as the guardian of Hong Kong's independence.⁴⁸

Annex II of the Joint Declaration expands on the establishment of a Sino-British Joint Liaison Group (the "JLG").⁴⁹ The JLG serves as a

organizations.

Id. § 3(10).

44. *Id.* § 3(7) ("The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.").

45. *See infra* part V (discussing China's motivation for not disturbing Hong Kong's free market economy).

46. Joint Declaration, *supra* note 29.

47. *See infra* part VI (outlining the importance to Hong Kong of the world's confidence in Hong Kong's economic performance as an SAR).

48. Joint Declaration, *supra* note 29, app. A § 3(2).

(2) The Hong Kong Special Administrative Region will be directly under the authority of the central people's government of the People's Republic of China. The Hong Kong Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

Id.

The interpretation of a "high degree of autonomy," in addition to the degree of its implementation, is critical to Hong Kong's future. *Id.* *See discussion infra* parts V-VI.

49. Joint Declaration, *supra* note 29, at Annex II.

1. In furtherance of their common aim and in order to ensure a smooth transfer of government in 1997, the Government of the People's Republic of China and the Government of the United Kingdom have agreed to continue their discussions in a friendly spirit and to develop the cooperative relationship which already exists between the two governments over Hong Kong with a view to the effective implementation of the Joint Declaration.

2. In order to meet the requirements for liaison, consultation and the exchange of information, the two governments have agreed to set up a Joint Liaison Group.

consultant to implementing change in the region.⁵⁰ One of the primary responsibilities of the JLG is to ensure that Hong Kong maintains its economic relations as a separate customs territory. To do so, the JLG must ensure the maintenance of Hong Kong's involvement as a participant in the General Agreement on Tariffs and Trade ("GATT") as well as other important international trade agreements.⁵¹ Hong Kong is now a contracting party to GATT and a member of the Customs Cooperations Council, and it will continue to participate in the Asian Development Bank as a separate party after 1997.⁵² Also, Hong Kong has agreed to continue its independent participation after 1997 in over twenty-five international organizations.⁵³ The terms of the Joint Declaration clearly emphasize the importance of the JLG in maintaining Hong Kong's independence and its reputation as a major international trade center.⁵⁴

Annex III of the Joint Declaration concentrates on the problem of land leases in Hong Kong, both current leases and those which extend beyond the retrocession in 1997.⁵⁵ The agreement provides for the continuation of both types of leases after 1997 under the administration of the newly-formed SAR.⁵⁶ Such provisions are imperative for a successful transition because the existence of property rights is fundamental to maintaining the economic status quo in Hong Kong.⁵⁷

The Joint Declaration clearly provides for pro-forma political autonomy in Hong Kong. There is, however, concern over the *degree* of actual autonomy that will result from the practical application of the

Id.

50. *Id.*

51. *Id.* at Annex II, § 4(a).

52. Donald Liao, *Hong Kong Can Weather the Storm in China*, JAPAN ECON. J., July 1, 1989, at 11. Donald Liao is secretary for the district administration for the Hong Kong government. *Id.* He is also a member of the Sino-British Joint Liaison Group. *Id.* It was very important for Hong Kong to be recognized as a member of GATT. This not only increased the colony's involvement in international trade, but opened up Hong Kong for future involvement in other international trade agreements. Further, it legitimized Hong Kong's independent status. *Id.*

53. *Id.* at 13.

54. *Id.* (noting also the importance in Hong Kong's maintaining its own separate governmental systems).

55. Joint Declaration, *supra* note 29, at Annex III.

56. *Id.*

57. Confidence in the legitimacy of property ownership, or in this case long-term leaseholds, is needed so that business can operate continuously with the assurance that the Chinese government will not interfere with Hong Kong property rights.

agreement.⁵⁸ There is no guidance as to the degree of autonomy within or outside the Joint Declaration. No definition of "autonomy" is found within the Joint Declaration, and there has never been a situation in the world's history quite like that of Hong Kong, where capitalism and socialism are to coexist within one country.⁵⁹

In addition, the 1989 Tiananmen Square incident, which occurred five years after the signing of the Joint Declaration, sent a shockwave of reality (and perhaps a glimpse of the future) through Hong Kong and the world; it led many critics of the Chinese government to advocate renegotiation of the Joint Declaration to further protect Hong Kong's interests.⁶⁰ The incident focused the world's attention on the struggle for basic human rights and democratic freedoms within China's borders. The Chinese government's absolute assertion of power is at the very least troublesome for the private sector in Hong Kong because, after the retrocession, the West will no longer be able to directly guarantee the fundamental human rights of Hong Kong's people.

Although the Joint Declaration was freely negotiated, signed, and ratified by two sovereign nations, was lodged with the United Nations, and is "legally" binding,⁶¹ the Joint Declaration's legality under international law has done little to convince the people of Hong Kong that the tension that led to the Tiananmen Square incident will not resurface.⁶² After all, markets and history do not respond as much to the legality of "binding" agreements as they do the reality of how the circumstances behind the agreements play out. Even a full year after the incident, over 1000 people emigrated from Hong Kong on a weekly basis.⁶³ Also, many in the business community will not have complete confidence in Hong Kong until

58. See generally Brian Z. Tamanaha, *Post-1997 Hong Kong: A Comparative Study of the Meaning of "High Degree of Autonomy,"* 20 CAL. W. INT'L L. J. 41 (1989) (explaining the meaning of "autonomy" in light of similar international arrangements between former colonies and the colonial power).

59. *Id.* at 42-43.

60. Liao, *supra* note 52 (noting that critics felt that Hong Kong needed more concrete guarantees for its inhabitants' basic human rights). The Joint Declaration does not address human rights specifically. Joint Declaration, *supra* note 29. See *infra* text accompanying notes 83-86.

61. Liao, *supra* note 52.

62. David Holley, 'Greater China': Superpower on a Drawing Board, L.A. TIMES, June 12, 1990, at H1.

63. *Id.* (Many Hong Kong inhabitants have traveled abroad to gain citizenship in other countries, particularly Canada. They then return to Hong Kong comfortable with the knowledge that, when the retrocession occurs, they may return to the country from which they gained their new citizenship if history does not play out in their favor).

they see how the Chinese government's methods of administrating the SAR will affect its economic system after the retrocession is fully implemented.⁶⁴ Some assurance of China's commitment to maintaining Hong Kong's current economic status can be found in China's commitment to modernize its own social and economic structure.

IV. THE HISTORY OF CHINESE MODERNIZATION: CHINA'S NEW REVOLUTION

The People's Republic of China was founded in 1948 with a commitment to develop foreign economic exchanges.⁶⁵ Unfortunately, China's initial economic relations with the outside world were not fruitful.⁶⁶ In the 1950s and 1960s, China was excluded from participating in international trade with many countries. During this time the leading industrial nations sought to thwart the country's economic development under the new communist government through containment and blockade policies that eventually failed.⁶⁷ From 1950 through 1959, foreign trade averaged a mere ten percent of the country's national income.⁶⁸ The short-run result of China's involuntary isolation was that its economy was denied the benefits of international trade.⁶⁹ In the long-run, however, China has clearly achieved great successes for its citizens by developing its economy through use of its tremendous resources.⁷⁰ As China developed on its own, it took an increasingly dim view of the benefits of international trade and of economic interdependency with other countries.⁷¹

Since the country's early years, China has steadily transformed from an isolationist nation to a major participant in the international trade community.⁷² Initially, China had a highly-centralized, planned

64. John Fung, *Q&A: Taking Stock of China; An Executive Examines Nation's Interest in Capitalism*; Thomas C. Casey, L.A. TIMES, Sept. 26, 1988, at IV.6.

65. Zhao Ziyang, *The Opening of China*, Atlantic Monthly Co., Dec. 1984, available in LEXIS, News Library, ASAPII File.

66. *Id.*

67. *Id.*

68. *Id.* (noting that foreign trade was 9.8% of the country's national income in 1950 and 12.2% of the country's national income in 1959).

69. *Id.*

70. *Id.*

71. *Id.*

72. Chen Ming, *Roundup: China Shifts from Planned Economy to Market Economy*, Xinhua Overseas News Serv., Oct. 10, 1992, available in LEXIS, News Library,

economy;⁷³ for the most part, it copied the Soviet economic system.⁷⁴ The government maintained tight control of the nation's economy.⁷⁵ During the first three decades of the People's Republic, there were small-scale free markets in China, but they were generally regarded as remnants of capitalism in the communists' grand scheme of human development.⁷⁶ Transformation from a planned economy to a more market-driven economy was not a popular initiative, to say the least.⁷⁷

Deng Xiaoping, China's long-time leader,⁷⁸ began economic reforms in 1978, marking the start of an economic revolution and ending China's economic isolationism.⁷⁹ Deng is widely considered to be the chief architect of China's current modernization program.⁸⁰ His reforms led to the end of collective agriculture and gave 750 million peasants the freedom to lease their land from the state for up to twenty years⁸¹ and the right to choose what crops to produce and how to produce them.⁸² Most importantly, they were rewarded for higher productivity.⁸³ As a result, food productivity increased and the hard-liners were silenced by the program's success. China, with seven percent of the world's cultivated land and twenty percent of the world's population, was finally able to feed its people.⁸⁴

XINHUA File. By official accounts, the hotly-disputed and unprecedented plan to transform China's economy has taken at least 14 years and has been comprised of five major steps.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. Deng is now 90 years old. *Id.*

79. *China's Leaders Endorse Socialist Market Economy at 14th Communist Party Congress*, Facts on File World News Dig., Oct. 22, 1992, at 785, available in LEXIS, News Library, FACTS File [hereinafter *14th C.P. Congress*].

80. *Id.*

81. Mortimer B. Zuckerman, *China Myth, China Reality*, U.S. NEWS & WORLD REP., Mar. 12, 1990, at 55 (noting, however, that many Chinese were still bound to their farms for economic reasons).

82. *Id.*

83. *Id.*

84. *Id.*

Deng also reformed China's urban economy by decentralizing it from full control in Beijing.⁸⁵ He allowed private enterprises to exist alongside state-owned enterprises and welcomed foreign investment.⁸⁶ China furthered its economic development by promulgating its joint-venture code.⁸⁷ This code gave two Chinese provinces greater autonomy in foreign trade matters than had previously been enjoyed⁸⁸ and specifically designated four cities as Special Economic Zones ("SEZs").⁸⁹

Thus, China had experienced yet another revolution under Deng's reforms, but this revolution did not extend into the country's governmental structure.⁹⁰ Deng still strongly believed that democracy would threaten the country's stability, which he saw as an essential element of governing a country that consists of one-fifth of the human race.⁹¹ The Tiananmen Square incident was a painful reminder of this commitment to maintaining the political status quo regardless of the cost to either human rights or human lives.⁹² The Chinese government still labels the incident as "counterrevolutionary rioting" and asserts that it will continue to "eliminate all factors that might lead to unrest or turmoil."⁹³

Regardless of the lack of political change, Deng's economic reforms have been successful.⁹⁴ Government controls on price and production affected less than one-third of available goods in 1992, and more goods are being freed from governmental control every month.⁹⁵ China's average growth rate in real gross domestic product has been a remarkable 8.6% a year since the reforms began in 1979.

85. *Id.*

86. *Id.*

87. *Id.*

88. Piers Jacobs, *Hong Kong and the Modernization of China*, 39 *J. INT'L AFF.* 63, 64 (1986) (noting that the two provinces that were given greater autonomy were Guangdong and Fujian).

89. *Id.* (noting that the new SEZs were Shenzhen, Zhuhai and Shantou in Guangdong and Xiamen in Fujian).

90. 14th *C.P. Congress*, *supra* note 79.

91. *Id.*

92. *Id.*

93. *Id.*

94. See generally Brenton Schlender, *China Really Is on the Move*, *FORTUNE*, Oct. 5, 1992, at 114.

95. *Id.*

The statistics are even more impressive in the international trade spectrum.⁹⁶ China's foreign trade rate increased to 18% of the country's income in the four years after reforms began in 1979.⁹⁷ Also, in the four years from 1980 through 1983, China's national income increased by 32% as its foreign trade rose by 57%.⁹⁸ China's exports were an impressive \$72 billion dollars in 1991, a 16% increase over 1990.⁹⁹ Finally, since the beginning of the 1980s, the rate of increase in China's economic and technical cooperation with foreign countries has continually outpaced the rate of increase in the growth of China's domestic production.¹⁰⁰ It is clear that China's future economic growth is highly dependent on foreign trade.

Yet, there is more to China's reformation than economic figures can divulge. Chinese society is also modernizing. In fact, some commentators believe that the key to modernizing China is the "modernization" of its people.¹⁰¹ So far, it has been difficult to get China's people to view their country in a different light, because the nation is going through somewhat of an identity crisis.¹⁰² Still, the government is working hard to replace the traditional "Marxism-Leninism-Mao Zedong Thought"¹⁰³ with a new sense of nationalistic pride.¹⁰⁴ After the Tiananmen Square incident and the collapse of communism around the

96. Ziyang, *supra* note 65.

97. *Id.*

98. *Id.*

99. Schlender, *supra* note 94.

100. Ziyang, *supra* note 65.

101. Mei Yi, *The Social Sciences and the Modernization of China*, 70 MINN. L. REV. 753, 759 (1986).

[The goal is to] build up China as a modern socialist country with a high level of civilization and democracy. To achieve this goal, it is necessary to bring about a sharp improvement in the whole nation's knowledge of science and culture and in its moral, political, and ethical standards. This is a historic task.

Id.

102. Eileen Donahoe, *The Promise of Law for the Post-Mao Leadership in China*, 41 STAN. L. REV. 171 (1988). There is constant debate among Chinese leaders over whether the country has adopted capitalism or merely modified their present socialist economy, creating the politically correct (in China) notion of a "socialist market economy."

103. Susan V. Lawrence, *Enter the Dragon*, U.S. NEWS & WORLD REP., Oct. 19, 1992, at 45.

104. *Id.*

world, nationalism may be the only ideological or political force capable of bringing the Chinese people together.¹⁰⁵

The uncertainty in China's political future is reflected vividly by actions taken within the Chinese government.¹⁰⁶ Many of China's rulers are reluctantly concluding that it is better to accept Deng's reforms than to fight them, especially in light of the recent acceleration toward a more market-driven economy.¹⁰⁷

At the Fourteenth Chinese Communist Party Congress in October 1992, there was a clear movement toward the idea of creating a new China.¹⁰⁸ Party members endorsed Deng Xiaoping's ongoing economic reform policies.¹⁰⁹ The Party's General Secretary¹¹⁰ stressed the success of the country's economic reforms and outlined the still current policy to intensify the market forces in order to accelerate those reforms.¹¹¹

V. "GREATER CHINA": CHINA'S INCENTIVE TO HONOR THE JOINT DECLARATION

China's greatest incentive to honor the letter and spirit of the Joint Declaration is its own desire to modernize to a state of development that has been referred to as "Greater China."¹¹² The concept of a Greater China as the unification of China, Hong Kong, and Taiwan is startling. This "country" would encompass one-fifth of the world's population and have the natural resources, nuclear capability, and scientific talent of China, the trading skills and financial know-how of Hong Kong, and the capital reserves and manufacturing techniques of Taiwan. Combining all of this with the potential to tap the goodwill of 30 million prosperous and educated patriots scattered in business centers across the globe, and a

105. *Id.*

106. *Deng's Last Show*, *ECONOMIST*, Oct. 10, 1992, at 13; *see also* 14th C.P. Congress, *supra* note 79.

107. *Deng's Last Show*, *supra* note 106; *see also* 14th C.P. Congress, *supra* note 79.

108. 14th C.P. Congress, *supra* note 79.

109. *Id.*

110. China's new President and Communist Party General Secretary, Jiang Zemin, is expected to continue Deng's reforms.

111. *Id.*

112. "Greater China" is a name increasingly used to either (1) separate the emerging, more capitalist, China from the traditional socialist "China" or (2) represent the political and economic giant that would result from the unification of China, Hong Kong, and Taiwan. *See* Holley, *supra* note 62.

civilization that is over 5,000 years old, the result is a political structure with unprecedented military and economic potential.

Many experts believe China has already *passed* the "point of no return" in pursuit of Greater China.¹¹³ They argue that China must keep reforming,¹¹⁴ because Chinese citizens, having tasted a higher standard of living (mostly in its modernized SEZs), will not tolerate a return to the lower standards of the socialist society.¹¹⁵

Thus far, China has made the relatively easy reforms in its slow but steady drive toward a more market driven China.¹¹⁶ These reforms include removing governmental controls from agriculture and small scale enterprise, undertaking stock market experiments, and encouraging foreign trade and investment.¹¹⁷ The more painful reforms lie ahead.¹¹⁸ The country must revitalize its state-run industry, revamp its banking, tax, and currency exchange systems, and greatly reduce the bureaucracy in its government.¹¹⁹ These structural reforms will greatly change the way domestic affairs are conducted with China and call for a large, skilled work-force to carry them out at every level.¹²⁰

China will have greater difficulty modernizing without the use of Hong Kong's resources.¹²¹ As capitalism transforms China, Hong Kong is poised to continue its role in Chinese development as the gateway for the world to mainland China—the world's largest labor and product market and one of the world's fastest growing economies.¹²² In addition to Hong Kong's long-time role as the entrepôt to China and as liaison between

113. Holley, *supra* note 62; *see also* Schlender, *supra* note 94.

114. 14th C.P. Congress, *supra* note 79.

115. Schlender, *supra* note 94. The current economic reforms are, however, not benefitting everyone in China. The reforms, along with more cost-conscious managers, are beginning to crack China's "Iron Rice Bowl" policy of providing cradle-to-grave job security. So far the expansion has been able to create jobs for those who were fired, but if it stops doing so, social unrest may follow. *Id.*

116. *Id.* at 115.

117. *Id.*

118. *Id.*

119. *Id.* (noting that many worry that the Chinese are not paying enough attention to the harder chores involved in reforming the country, and stating that "[m]ost of the tough reforms face entrenched opposition either in the Communist Party or in particular ministries and provinces.").

120. *Id.*

121. Richard King, *The Trade Situation for 1997 and Beyond*, L.A. DAILY J., Sept. 29, 1986, at S10.

122. *Id.*

China and the West, Hong Kong has also achieved great success in finance, manufacturing and trade;¹²³ China needs the valuable skills and experience of the Hong Kong people to assist in its efforts to modernize.¹²⁴ China can tap into Hong Kong's human and economic resources for the many "necessities" the country cannot provide for itself.¹²⁵

First, China needs the access to capital markets and a free-trading currency that Hong Kong can provide.¹²⁶ Hong Kong is currently one of the world's largest banking centers.¹²⁷ With the tremendous growth of the Pacific Rim and the maintenance of Hong Kong's high degree of autonomy, the territory may become the second largest banking center in the world by the year 2000.¹²⁸ Hong Kong's banking talents will be a tremendous asset to China, which will need ready access to capital to continue to finance its own modernization program.¹²⁹

Second, China needs access to trade facilities that Hong Kong can provide.¹³⁰ Hong Kong is the only deep-water port in Southern China and has the largest deep-water port anywhere on China's coast.¹³¹ Its fully-modernized container terminals and transportation and communication networks are unequaled in Asia.¹³² Hong Kong is currently the third largest container port in the world in terms of the number of containers handled.¹³³ China has continually relied on Hong Kong's trade facilities, and this reliance will increase as China continues to expand its foreign trade.¹³⁴

123. *Id.*; Skrentny, *supra* note 2.

124. King, *supra* note 119; Skrentny, *supra* note 2.

125. King, *supra* note 119.

126. *Id.*

127. Skrentny, *supra* note 2.

128. *Id.* Hong Kong is predicted to be second only to Los Angeles, which will also benefit by the Pacific Rim's tremendous growth. *Id.*

129. *See generally* Jacobs, *supra* note 88 (noting that Hong Kong is suited particularly well for this role as the colony's businessmen are already intrinsically familiar with the Chinese business structure).

130. *Id.*

131. *Id.*

132. King, *supra* note 121.

133. Jacobs, *supra* note 88 (noting that Rotterdam and New York are the first and second busiest ports, but current expansion is expected to take Hong Kong past New York).

134. *See discussion supra* part IV.

Third, Hong Kong has access to the technology needed to maintain China's competitiveness in foreign markets.¹³⁵ Hong Kong's skilled labor and advanced technology can help modernize China's aging manufacturing facilities and strengthen China's ability to maintain low-cost research and development.¹³⁶ Hong Kong and China both depend greatly on the manufacturing sectors in their economies.¹³⁷ The distinction between the two is that Hong Kong manufacturing facilities have been modernized to compensate for its higher labor costs,¹³⁸ whereas China, with its lower labor costs, has more labor-intensive facilities.¹³⁹ In fact, China's labor is among the least expensive in Asia.¹⁴⁰ Nevertheless, Hong Kong's technology can make Chinese manufacturing industries even more cost-effective by modernizing its facilities.¹⁴¹ In addition, Hong Kong has the technology to upgrade China's manufacturing facilities to expand the country's manufacturing base and enable it to produce more profitable goods. This improvement would expand China's role as an international manufacturing center.¹⁴²

Fourth, China can take advantage of Hong Kong's well-educated and highly-skilled work force.¹⁴³ As one of the world's purest examples of free enterprise,¹⁴⁴ Hong Kong is filled with highly-skilled workers with proven entrepreneurial and management skills.¹⁴⁵ Hong Kong is already China's most important classroom; it is a workshop for a new breed of Chinese managers.¹⁴⁶ Hundreds of Chinese business people are getting

135. King, *supra* note 121.

136. *Id.*

137. *Id.*

138. *Asia 2000*, *supra* note 20 (noting that Hong Kong's average hourly compensation in U.S. dollars was \$3.58 in 1991).

139. *Id.* (noting that China's average hourly compensation in U.S. dollars was \$0.24 in 1991).

140. *Id.* (noting the following Asian countries and their workers' respective average hourly compensation in 1991 U.S. Dollars: Taiwan, \$4.42; Philippines, \$0.42; Malaysia, \$1.19; Singapore, \$4.38; Indonesia, \$0.40; South Korea, \$4.32; Japan, \$14.41).

141. *See generally* King, *supra* note 121.

142. Jacobs, *supra* note 88.

143. King, *supra* note 121.

144. Skrentny, *supra* note 2 (noting that the president of the American Chamber of Commerce in Hong Kong has said that Hong Kong is the only place in the world where a person can get an idea for a business in the morning, incorporate by noon and have his first profits by 6 p.m.).

145. *Id.*

146. Mack Chrysler, *A Useful Embarrassment*, L.A. DAILY J., Sept. 29, 1986, at 2.

direct training from Hong Kong companies.¹⁴⁷ Many of the teachers have been deeply involved in building the economies in China's SEZs.¹⁴⁸ China will need continued access to these entrepreneurs in order to revamp its state-owned industries and expand the success of its SEZs into the rest of the country.¹⁴⁹

Fifth, China needs Hong Kong to continue investing in China's future.¹⁵⁰ In the long run, China will need the direct links with economic "dynamism" that its long-time socialist economy lacks and that Hong Kong can provide.¹⁵¹ Investment and expertise channeled from Hong Kong have already turned southern China into a highly-successful industrial sector.¹⁵² In 1992, over 16,000 Hong Kong-based companies employed over 2.7 million workers in the neighboring Chinese province of Guangdong.¹⁵³ Other foreign investment projects are involved in Guangdong as well; Hong Kong money has subsidized ninety percent of these projects,¹⁵⁴ and Hong Kong's highly-experienced tradespeople often act as liaisons between foreign investors and China to help get these projects started.¹⁵⁵ The positive effect of these investments is felt throughout China.¹⁵⁶ For example, Guangdong joint-ventures produce three times as many industrial jobs outside its borders and within China as they do within Guangdong.¹⁵⁷

147. *Id.*

148. *See generally* Schlender, *supra* note 94.

149. *Id.*

150. *Id.*

151. Christopher Howe, *Growth, Public Policy and Hong Kong's Economic Relationship with China*, 95 CHINA Q. 512, 530-31 (1983).

152. Louis Kraar, *A New China Without Borders*, FORTUNE, Oct. 5, 1992, at 124 [hereinafter *New China*].

153. *Future Perfect*, *supra* note 31.

154. Deane, *supra* note 12, at M14 (pointing out that Hong Kong is well-suited to handle foreign requests to help establish joint-ventures within China). The Hong Kong people are mostly Chinese, speak the language, know the culture, and have had years of experience dealing with the Chinese bureaucracy. *Id.*

155. *Id.*

156. *Future Perfect*, *supra* note 31.

157. *Id.* This multiplying effect occurs when wages and profits from the Guangdong region are spent outside the region. It also occurs when the demand for natural resources and supplies to run the industries in Guangdong are met from outside the region, but within China.

In sum, modern relations between Hong Kong and China are profitable for both sides.¹⁵⁸ Hong Kong and China are each other's largest trading partners:¹⁵⁹ Hong Kong has provided twenty-five to forty percent of China's foreign exchange earnings and about seventy percent of China's international trade comes from or through Hong Kong.¹⁶⁰ Thus, China must ensure that Hong Kong's economy will continue to run smoothly after the retrocession so that China will be able to continue to avail itself of Hong Kong's vast human and economic resources.

VI. CHINA'S ROLE IN QUELLING FEARS SURROUNDING THE 1997 RETROCESSION

Hong Kong's stability and prosperity are greatly dependent upon the collective confidence of the Hong Kong people and the international community in the colony's success as an SAR under Chinese control.¹⁶¹ In turn, Hong Kong's future is of utmost importance to China and the continued success of its modernization program.¹⁶² As such, Hong Kong's role as "fuel for China's economic fire" will increase as China approaches its goal of becoming Greater China.¹⁶³ China must now concentrate on convincing the people of Hong Kong and the world that Hong Kong will continue its success in the global economic theatre after the Chinese red flag is raised on July 1, 1997.¹⁶⁴

China must overcome several difficult obstacles in order to convince the world that Hong Kong will not degenerate after the retrocession is fully implemented.¹⁶⁵ First, China must gain the trust of Hong Kong's people, especially those with valuable entrepreneurial skills that China requires to fuel its growth.¹⁶⁶ At present, the Hong Kong people do not trust China's leaders (as reform-minded as they may be) and they

158. Liao, *supra* note 52.

159. *Id.*

160. *Id.*

161. *Id.* Investors will not invest in Hong Kong if there is too great a risk that the Chinese will somehow "throw a wrench" into Hong Kong's highly efficient and fragile system at the expense of the region's profitability. See Nicholas D. Kristof, *China Threatens Hong Kong Treaty*, N.Y. TIMES, Nov. 18, 1992, at A1, A11.

162. See *supra* part V.

163. Jacobs, *supra* note 88, at 63.

164. See generally Tamanaha, *supra* note 58.

165. See generally Jacobs, *supra* note 88.

166. *Id.*

generally lack faith in China's political system.¹⁶⁷ This long-standing lack of trust has been reinforced by China's strong anti-democratic stance¹⁶⁸ and by its steps to subject Hong Kong's Basic Law to final review by the Chinese government.¹⁶⁹ As a result, Hong Kong has suffered a well-publicized drain of talented people and valuable capital.¹⁷⁰

Second, China must convince the world that its government is committed to economic reform and capable of meeting the challenges that reform demands.¹⁷¹ This will be difficult because China is governed by long-time communists who are only now developing the skills required to allow capitalism to flourish.¹⁷²

The international community is concerned most about four major issues regarding modern Chinese reform and its impact on Hong Kong's prosperity.¹⁷³ First, there is concern that China's communist bureaucracy could destroy Hong Kong's fragile free-market system.¹⁷⁴ The Joint Declaration addressed this issue by providing Hong Kong with a "high degree of autonomy" until 2047.¹⁷⁵ However, the impact of China's bureaucracy will not be entirely clear until after the retrocession is fully implemented.¹⁷⁶ Second, China's internal strife¹⁷⁷ may trigger further

167. *Peking's One Country, Two Systems' Policy Questioned*, Central News Agency, Oct. 29, 1991, available in LEXIS, News Library, CENEWS File [hereinafter *Peking Questioned*].

168. See Kristof, *supra* note 161, at A1, A11.

169. *Peking Questioned*, *supra* note 167. The Basic Law is intended to serve as a foundation for Hong Kong's future political system and Bill of Rights. *Id.* It is subject to interpretation and amendment by the Chinese government as Beijing sees fit. *Id.* Thus, there will be no guarantees of political freedom or basic rights for the Hong Kong people after the retrocession. *Id.*

170. Jack Chan, *Hong Kong's Role After 1997*, 12 LOY. L.A. INT'L & COMP. L.J. 54, 55 (1989). In 1987 alone, 30,000 people emigrated from Hong Kong, many of whom were well-qualified, mid-level managers that Hong Kong can least afford to lose. Cunnew, *supra* note 6.

171. Chrysler, *supra* note 146.

172. *Id.*

173. *Id.*

174. *Id.*

175. Joint Declaration, *supra* note 29. The hope among investors in Hong Kong is that China has learned from its 14 years of reforms that capitalism performs more efficiently with minimal governmental control; likewise, investor confidence that the government not only realizes this, but acts toward this end is paramount. Chrysler, *supra* note 146.

176. The world will not know how the Joint Declaration's preventive medicine will have worked until the Chinese actually take over as guardians of Hong Kong. Chrysler, *supra* note 146.

177. China's internal strife is largely a result of the country's hard-line views toward

repression of the Chinese people, and, possibly, the Hong Kong people.¹⁷⁸ Third, the international community is concerned that the Chinese government will use Great Britain's pressure to set up a democracy in Hong Kong as an excuse to void the Joint Declaration.¹⁷⁹ Fourth, critics of the Chinese government fear that the Chinese reformation will end with the death of Deng Xiaoping, the country's leading reformer, and that less reform-minded leaders may resume control of the government and reverse the economic and social progress experienced as a result of Deng's reforms.¹⁸⁰

China has already begun to confront these issues and build worldwide confidence in Hong Kong's economic future.¹⁸¹ China has invested over ten billion dollars in Hong Kong in recent years in an effort to convince Hong Kong's business leaders and the world that capitalism will continue as promised in the Joint Declaration.¹⁸² Also, an unprecedented number of major new public and private projects, designed to build Hong Kong's infrastructure and prepare it for its expanding role in China's modernization, are now underway in Hong Kong.¹⁸³ The cost of these projects total over one hundred million Hong Kong dollars.¹⁸⁴ Many of the projects have a pay-back date well into the next century.¹⁸⁵ Perhaps

human rights and democratic reforms in the country, such as the Tiananmen Square incident. See notes 59-63 and accompanying text.

178. This scenario is truly a problem for China as it shows no sign of relinquishing its totalitarian control over its people. A crackdown on internal strife could harm China significantly by uniting world pressure against the country in the form of international economic sanctions against China similar to those China experienced earlier in its history. See notes 59-63 and accompanying text.

179. Kristof, *supra* note 159, at A1. Britain has made moves to set up a democracy in Hong Kong in the hope that the system would be "grandfathered" in when the Chinese take over the colony in 1997. *Id.* (noting that recent Chinese retaliation to the British move in the form of threatening China's observance of the Joint Declaration does nothing but harm China's interests in the long-run by damaging investors's confidence in both Hong Kong and China). See also, Jonathan Braude, *Peking Warns of Political Disaster*, THE TIMES (LONDON), May 7, 1994, available in LEXIS, News Library, CURNWS File.

180. The Chinese Communist Party has recently approved a new leadership that includes reformers and conservatives who are committed to accelerating China's economic liberalization. 14th C.P. Congress, *supra* note 79.

181. *New China*, *supra* note 149, at 152.

182. *Id.*

183. Liao, *supra* note 52 (noting that projects include several major roads and tunnels in addition to two new container terminals for Hong Kong's busy port).

184. *Id.*

185. *Id.*

a more favorable sign for Hong Kong's future is the large number of investments made by China's state-run firms directly into Hong Kong companies.¹⁸⁶ China's direct and indirect investments in Hong Kong are thought at least to reflect China's commitment to the region and at best to ensure itself a place in Hong Kong's profitable free market after 1997.¹⁸⁷ In sum, China must continue to build the international community's confidence in Hong Kong so that valuable human and economic capital will not flee the territory.¹⁸⁸

VII. ENCOURAGING HONG KONG'S CONTINUED AUTONOMY

The international community's best option to encourage the reality of Hong Kong's high degree of autonomy is to support the reform-minded economic forces in place in China which have already changed the country dramatically.¹⁸⁹ Hong Kong has been a catalyst for modernization in China.¹⁹⁰ As long as China will be able to continue modernizing, Hong Kong will be able to build upon the success of its current economic system. As a result, the international business community will have more confidence that the Chinese will protect the interests of foreign investors.¹⁹¹ In return, China will continue on its path toward modernization.¹⁹²

The Taiwanese government recognizes that there is a possible role for Hong Kong beyond that of a model for the modernization of mainland China.¹⁹³ It sees Hong Kong's continued positive influence on Chinese reforms as a way of conquering China's present political structure from the inside.¹⁹⁴ The Taiwanese government envisions the eventual unification of China and Taiwan as China's political structure is overcome by its own efforts to modernize.¹⁹⁵

186. See generally Deane, *supra* note 12.

187. King, *supra* note 121.

188. See Kristof, *supra* note 161, at A1, A11.

189. Deng's Last Show, *supra* note 106.

190. Chrysler, *supra* note 146 (quoting Jack So, Executive Director of the Trade Development Council in Hong Kong).

191. Fung, *supra* note 64.

192. *Id.*; see *supra* part V.

193. Peking Questioned, *supra* note 167.

194. Holley, *supra* note 62.

195. *Id.*

There is little doubt that the world will pay close attention to Chinese reforms and to China's treatment of Hong Kong after July 1, 1997.¹⁹⁶ Refusal to do business with the Chinese would have the effect of a self-imposed bar from a huge labor and consumer market.¹⁹⁷ Japanese and American investments in Hong Kong exemplify the world's interest in Hong Kong.¹⁹⁸ Japanese investment in the colony accounts for nearly twenty percent of the country's direct investment in Asia,¹⁹⁹ and its investments in manufacturing industries are second only to those of the United States.²⁰⁰

VIII. CONCLUSION

Relations between Hong Kong and China have been filled with dramatic changes over the years.²⁰¹ First, Hong Kong was a haven for Chinese refugees as unrest swept the mainland.²⁰² Then, as China modernized, Hong Kong supported its modernization and both sides profited heavily from it.²⁰³ Now, as the 1997 retrocession approaches, China must adhere to the letter and spirit of the Joint Declaration so that Hong Kong can continue its success as a highly-profitable international trading center²⁰⁴ and accelerate China's revolutionary efforts to modernize its own economy.²⁰⁵

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196. See generally Ziyang, *supra* note 65.

197. Ziyang, *supra* note 65.

198. Liao, *supra* note 52.

199. *Id.*

200. *Id.*

201. See *supra* part II.

202. See *supra* notes 12-18 and accompanying text.

203. See *supra* part V.

204. See *supra* part VI.

205. See *supra* part V.

